IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7673 of 1989

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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KUNVERBEN KALYAN & 5 - Petitioner(s)

Versus

COMPETENT AUTHORITY AND DY COLLECTOR & 2 - Respondent(s)

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Appearance :
MR JR NANAVATI for Petitioners: 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MS MINI NAIR AGP for Respondent(s) : 1 - 2.
MR RM CHHAYA for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
30th JULY 2007 // 14th SEPTEMBER, 2007

ORAL JUDGMENT

This petition, preferred under *Article* 226 of the Constitution of India, arises from the proceeding under the Urban Land [*Ceiling & Regulation*] Act, 1976

[hereinafter referred to as, "***the Act of 1976***"]. The petitioners before this Court are the heirs and successors-in-title of one Kalyan Karshan. The petitioners have challenged the Order dated 24th October, 1985 made by the Competent Authority under Section 8 [4] of the Act of 1976 confirmed by Order dated 28th September, 1989 made by the Urban Land Tribunal in Appeal No. RAJKOT-33 of 1989.

It appears that the aforesaid Kalyan Karshan held certain agricultural lands situated *within* the urban agglomeration of Rajkot City. Upon introduction of the Act of 1976 with effect from 17th February, 1976, the said Kalyan Karshan filed the statement of his holding in Form-I as envisaged by sub-section [1] of Section 6 of the Act. According to the particulars entered in the said statement, the said Kalyan Karshan held the lands in question as an individual and that no other person had interest in the said lands. Pending proceedings before the Competent Authority, the said Kalyan Karshan passed away on 24th January, 1978 leaving behind the present petitioners as his heirs and successors-in-title. In answer to the draft statement served under Section 8 [3] of the

Act of 1976, the present petitioners lodged their objection on 2nd August, 1983. On 24th October, 1985, the competent authority made Order as envisaged by section 8 [4] of the Act of 1976. By the said Order, the said Shri Kalyan Karshan was held to be in possession of the *vacant land* in excess of the ceiling area to the extent of 52,287.55 sq.m. [hereinafter referred to as, "***the excess vacant land***"]. A final statement to that effect, as envisaged by Section 9 of the Act of 1976, was drawn on 30th January, 1986. Pursuant to the said final statement, Notification in respect of the excess vacant land as envisaged by Section 10 [1] of the Act of 1976 was issued on 7th April, 1986 and was published in the official gazette on 24th April, 1986. The excess vacant land was vested in the State Government by Notification dated 24th November, 1986 issued under Section 10 [3] of the Act of 1976. The said Notification was published in the official gazette on 11th December, 1986. The notice under Section 10 [5] of the Act of 1976 to hand over possession of the excess vacant land was given on 30th December, 1986. Long thereafter, in the year 1989,

the petitioners preferred above referred Appeal No. 33 of 1989 before the Urban Land Tribunal against the order dated 24th October, 1985 made by the competent authority under Section 8 [4] of the Act of 1976. Pending the said Appeal, the State Government took over possession of the excess vacant land on 27th July, 1989. By its judgment and order dated 20th September, 1989, the Tribunal rejected the claim of the petitioners. However, observed that the action of the State Government in taking over possession of the excess vacant land pending the proceeding before the said Tribunal was in contravention of the *interim* stay granted by the said Tribunal. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Nanavati has assailed the decision of the Tribunal and the action of the State Government in taking over the possession of the excess vacant land without following the due procedure. The challenge is many fold. He has submitted that the lands in question were agricultural lands and were being used for agricultural purposes. Indisputably, on the date of the Act, there was no master plan prepared in respect of the said lands. The said lands, therefore,

did not fall within the meaning of the words "***Urban Land***" or "***Vacant Land***" as defined in the Act. The provisions of the Act, therefore, did not apply to the said lands. He has next submitted that the Rajkot Municipal Corporation had proposed a master plan in respect of the said lands as far back as in the year 1970. The said master plan was sanctioned by the State Government on 22nd March, 1976 i.e., after the date of the Act. If at all the said lands were urban land, as envisaged by the Act, it was only after 22nd March, 1976 and not on the date of the Act. He has submitted that under the said master plan, the said lands were reserved for Regional Park. Under the relevant building regulations, no construction was permitted on lands which were reserved for Regional Park. Hence, the said lands could not be said to be "*vacant land*" as defined in the Act. The said lands were, therefore, absolved from the rigors of the provisions of the Act. In the submission of Mr. Nanavati, Rajkot Urban Development Authority [hereinafter referred to as, "***the Development Authority***"] came to be constituted in the year 1978 under the Gujarat Town Planning & Urban Development

Act, 1976. The draft development plan prepared by the Development Authority which included the lands in question was sanctioned on 27th April, 1988. Under the said development plan, the lands in question were designated as Recreational Zone. No construction was permitted on the lands designated for recreational zone. Hence, from the date of the said plan also, the said lands did not become "*vacant land*" within the meaning of the Act. It was under the revised final development plan sanctioned in the year 2004 that the said lands have been designated as general industrial zone. However, before the date of the revised development plan, the Act came to be repealed on 30th March, 1999 by the Urban Land [*Ceiling & Regulation*] Repeal Act, 1999. Hence, the lands' being designated as the general industrial zone under the development plan, has no significance for the purpose of the Act of 1976. In the above circumstances, the Tribunal as well as the competent authority below manifestly erred in not holding that the disputed lands were not "*vacant land*" within the meaning of the Act and that they were not susceptible to the proceedings under the Act.

Mr. Nanavati has also submitted that the said lands were ancestral land in the hands of the said Kalyan Karshan and were joint family property inherited by the said Kalyan Karshan and his brother Bechar Karshan. The said Kalyan Karshan and all other co-parceners had an equal share in the said lands. Each of such co-parceners was entitled to hold the land equivalent to the ceiling area i.e., 1500 sq.mtrs. The Tribunal and the competent authority have erred in not believing that the said lands were joint family property and in treating the said lands as the holding of the said Kalyan Karshan alone. The *impugned* order of the Tribunal, therefore, deserves to be *set-aside*.

Mr. Nanavati has further submitted that pending the appeal before the Tribunal, the Tribunal had granted stay against the further proceeding under the Act. Nevertheless, pending the appeal, in defiance of the interim order made by the Tribunal, the State Government allegedly took over possession of the excess vacant land in the month of July, 1989. The said action of the State Government was evidently illegal and void *ab initio*. He has submitted that the

action of the State Government in taking over possession of the excess vacant land was also illegal because the State Government failed to follow the mandatory procedure under Section 10 [5] of the Act. He has submitted that Section 10 [5] of the Act enjoins the competent authority to order, by notice in writing, any person who may be in possession of the excess vacant land to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government. He has submitted that the language of sub-section 5 of Section 10 of the Act is clear and *unambiguous*. Every person who is in possession of the excess vacant land is entitled to a notice in writing to hand over possession of such land. In the present case, it was known to the competent authority that the original owner Kalyan Karshan had died pending the proceeding. The matter was pursued by his successors-in-title i.e., the present petitioners. All of them had filed objection against the draft statement prepared under Section 8 [3] of the Act. Since the death of the said Kalyan Karshan, all of them were in joint possession of the land in question. Each of them was, therefore,

entitled to a notice under Section 10 [5] of the Act. He has submitted that admittedly in the present case, such notice was issued to and served upon Mohan Kalyan; one of the sons of the said Kalyan Karshan. The other joint owners of the said lands were not given such notice. Nevertheless, the State Government has unilaterally taken over possession of the excess vacant land. The action of the State Government is *ex facie* illegal, invalid and *ultra vires* the Act of 1976. The excess vacant land, therefore, should be restored to the petitioners – successors in title of the said Kalyan Karshan. Mr. Nanavati has submitted that in view of the Repeal of the Act of 1976 by the Urban Land [*Ceiling & Regulation*] Repeal Act of 1999, no further action can be taken under the Act in respect of the excess vacant land. In support of his submissions, he has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***Gujarat Electricity Board v. Girdharlal Motilal & Anr.,*** [AIR 1969 SC 267]; of ***State Bank of India v. Chamandi Ram (dead) by his legal representative Gurbux Rai*** [AIR 1969 SC 1330 ***Smt. Atia Mohammadi Begam v. State of UP & Ors.*** [AIR 1993 SC 2465]; and of ***Kochkunj Nair v.***

Koshy Alexander & Ors. [(1999) 3 SCC 482]; and of this Court in the matter of ***Indrajigsingh P. Geel v. Competent Authority & Deputy Collector & Anr.,*** [2006 (3) GLH 487].

The petition is contested by Ms. Nair. She has submitted that the statement filed by the aforesaid Kalyan Karshan in Form No.I was in his individual capacity. It never was the case of the said Kalyan Karshan that the disputed lands were joint family property or ancestral property as averred in the petition. She has submitted that once the excess vacant land was vested in the State Government by Notification issued under Section 10 [3] of the Act, the property in the excess vacant land passed over to the State Government free from all encumbrances. She has submitted that it was the aforesaid Mohan Kalyan who had appeared before the competent authority and had contested the proceedings for himself and on behalf of the other joint owners. It was the said Mohan Kalyan who alone was entitled to a notice under Section 10 [5] of the Act. Such notice was admittedly received by the said Mohan Kalyan. The subsequent proceeding, therefore, cannot be

vitiated for want of notice to the other joint owners. In answer to the notice issued under Section 10 [5] of the Act of 1976,, it was the duty of the petitioners to hand over possession of the excess vacant land. As the petitioners failed to hand over possession of the excess vacant land voluntarily, the State Government was required to invoke power conferred by Section 10 [6] of the Act and to take over possession of the excess vacant land unilaterally. The State Government did take over possession of the excess vacant land in presence of the panchas. The excess vacant land has thus been transferred to the State Government in the manner prescribed under the law. The petitioners have no right to challenge such action of the State Government. She has submitted that irrespective of the master plan, the lands held by the said Kalyan Karsan were "*vacant land*" within the meaning of the Act. On introduction of the master plan or the development plan, the said land would not become non-vacant land. In support of her submissions, she has relied upon the judgments in the matters of ***State of A.P & Ors. vs. N. Audikeshava Reddy & Ors.*** [(2002) 1

SCC 227]; of ***Vipinchandra Vadilal Bavishi & Anr. v. State of Gujarat & Ors.*** [2002 (3) GLR 2592]; of ***[Shri] Nitinkumar Pramodbhai Pandya v. Spenta Colour Lab. Private Limited*** [1995 (1) GLH 753]; ***Khadabhai Chakubhai Patel & Ors. v. State of Gujarat & Ors.*** [2001 (3) GLH 52]; of ***Groupe Chimique Tunisiensa v. Southern Petrochemicals Industries Corporation Limited*** [(2006) 5 SCC 275]; and of ***Bharatkumar Lalbhai Vasa & Ors. vs. State of Gujarat & Ors***. [2007 (1) GCD 367 (*Guj*)]. Miss Nair ha also relied upon the judgment of this Court [Coram : R.S Garg, J.] in the matter of ***Shree V.Engineering & Sons versus Competent Authority & Deputy Collector (ULC) & Another*** {Special Civil Application No. 4093 of 1990 : Decided on 20th December, 2006].

14th September, 2007

The contention that the lands were ancestral property and that they were the joint family property and the said Kalyan Karshan jointly owned it with other co-parceners requires to be rejected outright. Copy of the statement filed by the said Kalyan Karshan has been produced by learned AGP Miss Nair.

In the said statement, the said Kalyan Karshan had shown the said lands as his individual property and that no other person had interest in the said lands. It is now not open for the petitioners, successors-in-title of the said Kalyan Karshan, to urge that the lands were the joint family property and that the said Kalyan Karshan had a limited share in such lands.

Nevertheless, I am of the opinion that the petition deserves to be allowed for two reasons. *First*, it is indisputable that the said lands were agricultural lands and were being used for the purpose of agriculture. It is also not disputed that on the date of the Act of 1976 i.e., 14th February, 1976, there was no master plan or the development plan in respect of the said lands. Hence, the said lands, used for the agricultural purposes, were not "*urban land*" within the meaning of the Act nor were they "*vacant land*" *within* the meaning of the Act. However, as recorded hereinabove, the master plan prepared by the Rajkot Municipal Corporation came to be sanctioned on 22nd March, 1976 i.e., soon after the date of the Act. Under the said master plan, the said

lands were designated for Regional Park. *Thus*, the said lands became "*urban land*" as envisaged by Explanation [c] to Clause [o] (ii) of Section 2 of the Act of 1976. The said lands *thus* became the subject matter of the Act of 1976. Now, the question arises whether the said lands can be said to be "*vacant land*" within the meaning of the Act of 1976. The term "*vacant land*" has been defined in Clause [q] of Section 2 of the Act of 1976. The said clause [q], in so far as it is relevant for the purpose, reads as under :-

> {q} "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include,-
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> [i] land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;
>
> [ii] xx xx xx xx xx
>
> [iii] xx xx xx xx xx

Thus, only those of the lands on which construction is permissible can form "*vacant land*". In other words, the lands *within* the urban agglomeration which are not permissible to be constructed upon are not "*vacant land*" within the meaning of the Act of 1976. As recorded hereinabove, *first*, under the master plan of 22nd March, 1976, the said lands were reserved for

regional park, and second, under the development plan prepared by the Rajkot Urban Development Authority in the year 1988, the said lands were reserved for recreational purposes. It is the categorical submission of Mr. Nanavati that under the prevalent building regulations neither the lands reserved as Regional Park nor the lands reserved for recreational purpose are permitted to be constructed upon. In support thereof, he has relied upon zoning regulations. Under the said zoning regulations, for lands designated as recreational zone, the construction permissible is "***maximum two per cent built up area shall be permissible in the recreational zone where only ground floor construction shall be permissible***". Thus, there was a limited scope for construction on the said lands. While computing the extent of vacant land held by the said Kalyan Karshan, the competent authority was duty bound to ascertain the extent of the land on which construction was permissible. The extent of land on which construction was not permissible could not have been included in the computation of the "*vacant land*". It seems that had this exercise been taken up

by the competent authority, substantial part of the land would have been out of the purview of the Act, as they were not the "*vacant land*" within the meaning of the Act. In my opinion, therefore, the competent authority and the Tribunal committed grave illegality in not excluding from the computation of the vacant land such of the lands which were not constructible.

The second infirmity is in respect of the notice given under Section 10 [5] of the Act of 1976. It is not true that the aforesaid Mohan Kalyan had lodged objection against the draft statement drawn under Section 8 [3] of the Act on behalf of all, as alleged. It is evident that all the successors-in-title of the said Kalyan Karshan had lodged objection against the said draft statement. It was, therefore, imperative that all such persons were called upon to participate in the proceeding under the Act of 1976, as all of them had jointly inherited the said lands from the said Kalyan Karshan. In absence of partition amongst them, all of them had a right to possession and enjoyment of the lands with the other co sharers. All of them were, therefore, in possession of the said lands and were entitled to notice to hand over

possession of the excess vacant land as envisaged by Section 10 [5] of the Act. Admittedly, the State Government did not give notice to hand over possession of the vacant land as envisaged by Section 10 [5] of the Act to all the co-owners under the impression that no such notice was required. However, the law is otherwise.

In the aforesaid circumstances, this Court has to hold that the action of the State Government in unilaterally taking over possession of the excess vacant land without first completing the statutory requirement under Section 10 [5] of the Act was illegal and *ultra vires* the Act.

For the aforesaid reasons, the petition is allowed. The *impugned* judgment and order dated 28th September, 1989 passed by the Urban Land Tribunal in Appeal No. RAJKOT-33 of 1989 is *quashed* and set-aside. The action of the State Government in taking over possession of the excess vacant land unilaterally in exercise of the power conferred by Section 10 [6] of the Act is also set-aside. The State Government is directed to restore the possession of the excess vacant land to the

petitioners. The State Government shall restore possession of the excess vacant land to the petitioners *within* six weeks from *today*. Rule is made absolute in the above terms with cost.

Learned AGP Miss Nair says that this Order be stayed for a period of *four* weeks. The request is granted. Operation and execution of this order is stayed for a period of *four* weeks from *today*.

{Ms. R.M Doshit, J.}

*Prakash**